IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE N.V. RAMANA

W.P. No. 12342 of 2002

and

W.P. No. 5842 of 2006

Dated: March 28, 2006

Between:

M/s. Shiva Shanker Theatre,

Khammam, Rep. by its

Partner B.Sampath Kumar

Petitioner

AND

The Second Appellate Authority U/s. 48(3)

Of A.P. Shops & Establishment Act, 1988

& Deputy Commissioner of Labour,

Hyderabad (TCs) and others.

Respondents

THE HONOURBALE SRI JUSTICE N.V.RAMANA

W.P. No. 12342 OF 2002

AND

W.P. NO. 5842 OF 2006

COMMON ORDER:

By order dated 3.3.2006, this Court disposed of W.P. No. 12342 of 2002, filed by M/s. Shiva Shanker Theatre, represented by its partner, namely Sri. B. Sampath Kumar (hereinafter referred to as 'the first petitioner') directing the appellate authority to reconsider the matter. As the said order needed clarification, the writ petition was directed to be listed under the caption "for being mentioned". Accordingly, the writ petition is listed under the caption "for being mentioned". After the disposal of the writ petition, one Sri. G.S.P. Veera Reddy (hereinafter referred to as 'the second petitioner') filed writ petition in W.P. No. 5842 of 2006 assailing the order dated 06.12.2005 passed by the I Additional Judicial Magistrate of I Class, Khammam, in Crl.M.P. No. 354 of 2004 in S.E. No. 16 of 1996, directing issuance of NBW, *inter alia* he is not the owner of the Theatre, for he having purchased the Theatre from its previous owner, had sold the same to the first petitioner in 1996.

As the writ petitions filed by the first petitioner and the second petitioner are inter-connected, and having regard to the fact that the order dated 03.03.2006 passed by this Court disposing of the writ petition filed by the first petitioner needed clarification, the same is recalled, and both the writ petitions, filed by the first petitioner and the second petitioner, are taken up for hearing together, and are being disposed of by this common order.

The first petitioner states that on the representation made by the second petitioner that he had paid all the statutory dues of the workers, he had purchased the Theatre and took over its management in 1996, and dispensed with the services of the workers, namely unofficial respondents. The unofficial respondents complaining that their services were illegally terminated by the management of the Theatre during 1996 without paying them the statutory benefits which they are entitled to under law, moved the Assistant Commissioner of Labour- First Appellate Authority under the Shops and Establishments Act, 1988 (for brevity the Act), by way of claim applications, arraying the first petitioner and second

petitioner as respondent Nos. 2 and 1 respectively. The First Appellate Authority, vide order dated 19.09.2000, allowed the claims of the workmen. To set aside the said order, the first petitioner filed applications, which by docket order dated 13.11.2000 of the First Appellate Authority, were dismissed. Aggrieved by the same, the first petitioner filed Second Appeal Nos. 1 to 7 of 2001 before the Deputy Commissioner of Labour-Second Appellate Authority, who by order dated 13.05.2002, dismissed the same holding that there is no illegality. Aggrieved by the said orders, the first petitioner filed W.P. No. 12342 of 2002. Thereafter, when the order of the First Appellate Authority, as confirmed by the Second Appellate Authority, was sought to be enforced, by issuing NBW, the second petitioner filed W.P. No. 5842 of 2006.

The learned counsel for the first petitioner contended that the First Appellate Authority without giving reasonable opportunity to the first petitioner to defend the case, has passed orders allowing the claims of the workers, which is liable to be set aside, and though the first petitioner filed applications to set aside the said order, the First Appellate Authority as well as the Second Appellate Authority committed grave error in not setting aside the same. He thus prayed that the order passed by the First Appellate Authority, as confirmed by the Second Appellate Authority, refusing to set aside the order passed by the First Appellate Authority, allowing the claims of the workmen, be quashed.

The learned counsel for the second petitioner submitted that the second petitioner has nothing to do with the affairs of the Theatre, for he having sold the Theatre has handed over the management of the Theatre to the first petitioner, and as such, no useful purpose would be served in issuing NBW to him. He thus prayed that the NBW issued against the second petitioner be set aside.

On the other hand, the learned counsel appearing on behalf of the workmen supported the order impugned by the first petitioner allowing the claims of the workmen. He submitted that as the first petitioner despite giving opportunity failed to defend his case, file counter, lead evidence and arguments and even failed to attend the arguments, the First Appellate Authority has allowed the claims of the workmen, and for the very same reasons, the First Appellate Authority as well as the Second Appellate Authority, refused to set aside the order passed, allowing the claims of the workmen, and no exception can be taken thereto.

Heard the learned counsel for the respective parties, and perused the material available on record.

The first petitioner, admittedly, did not challenge the order dated

19.09.2000, passed by the First Appellate Authority, allowing the claims of the workmen. The first petitioner, merely, assailed the order dated 13.11.2000 passed by the First Appellate Authority, as confirmed by the Second Appellate Authority, refusing to set aside the order dated 19.09.2000, passed allowing the claims of the workmen. Having perused the impugned order, I see no reason whatsoever to interfere therewith. However, it is the case of the first petitioner that as against the order dated 19.09.2000, passed by the First Appellate Authority, allowing the claims of the workmen, he has a remedy of filing appeal before the Second Appellate Authority, and as he has not preferred any appeal against the said order, he would now like to prefer appeal to the Second Appellate Authority. If any such appeal remedy is available to the first petitioner, it is always open for him to avail such remedy. Inasmuch as the first petitioner intends to avail the remedy of appeal against the order of the First Appellate Authority, allowing the claim of the workmen, and having regard to the fact that some amounts were already said to have been deposited before the Second Appellate Authority, which is said to be a condition precedent for entertaining the second appeal, I am of the considered opinion that the NBW, issued by the I Additional Judicial Magistrate I Class, Khammam, in execution of the order allowing the claims of the workmen, is liable to be set aside, and is accordingly set aside, and more so when it is the case of the second petitioner that he had already sold the Theatre to the first petitioner.

Accordingly, both the writ petitions are disposed of. No costs.

N.V.RAMANA, J.

March 28, 2006

MAS.